Scott M-21—[illegible]—17-11-

# (1150) Departmen

MS. SERIES.

G.O. NO. 1494

1494

Dated 23/5/50.

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[Despatch Abstract.]

[illegible]

ADDITIONAL ASST. SECRETARY TO GOVERNMENT
2226 C
12 APR 49
REVENUE DEPARTMENT

To

The Secretary to the Government
Revenue Department
Government of Madras.

Petition of Kota Manjunath Shanbhag
Merchant, Coondapoor Town.S.Kanara.

Sir,

I resubmit herewith my Memorial returned with Government's endorsement " Enot No.16547/ F.49 dated 31.3.1949.

2. A copy of my petition dated 21.2.1947 to the Tahasildar of Udipi Taluk for assignment of the plot to me is enclosed herewith. On this petition the Tahasildar reported the question of assignment to the Revenue Divisional Officer Coondapoor and the latter Officer to the Collector of South Kanara. The Collector refused the assignment in his proceedings L.Dis.8785/47 dated 28.7.1947. As these proceedings were passed not on my petition but on the report of the Revenue Divisional Officer a copy of the proceedings was not probably sent to me and my application for a copy was also refused by the Collector. Please see his order L.Dis.C.P.267/ dated 10.10.1947 which is enclosed herewith. I have also enclosed a copy of my appeal to the Board of Revenue and the order passed by the Board. If the Collector's order is necessary for reference it may be kindly called for from the Collector.

Coondapoor
Dated 7th April.1949

Yours faithfully,

K. Manjunatha Shanbhag

Petitioner.

To

The Secretary to the Government
Revenue Department
Madras.

Kota Manjunath Shanbhag , Son of Marthappa Shanbhag,
Coondapoor Town, Coondapoor Taluk, South Kanara District -
Memorialist.

Most Respectfully Sheweth,

That the memorialist being highly aggrieved by the enclosed order of the Board of Revenue Res.No.3206 dated 15.5.48 rejecting his petition in the matter of the assignment of his Kumki land S.No.195/2 measuring acres 1.28 of Chitrapad Village, Udipi Taluk begs humbly to approach the benign Govt. with this memorial with the sanguine hope that the present peoples Government will redress the grivances.

2. That the memorialist submits that he holds a pretty larg extent of the Kadim land S.No.225/9 in Chitrapadi Village to which S.No.192/2 & 3 form Kumki so that the latter two plots are quite essential for the proper cultivation of his Kadim property.

3. That in 1916 the District Board asked for the alienatio of S.No.195/3 and as this alienation was for purposes of a Travellers Bungalow,neither the memorialist nor the other common Kumkidars raised any objection though they lost a good deal of the kumaki land which was helpful for supplying manure leaves and twigs required for the cultivation of their Kadim lands.

4. That the case of the plot in dispute viz. S.No.195/2 is however quite different- It is a Kumaki land of the memorialist which was quite essentiel for the cultivation of his Kadim lands and it was forcibly occupied by the District Board as the District Board Engineer tresspassed on it, cut all the trees and tree grouth which was supplying manure leave for the Kadim Lands and planted cocoanut trees in it without the knowledge of the memorialist who is an absentee land lord on account of trade business in Coondapoor.

5. That the memorialist soon after he came to know of thi forcible unauthorised occupation on behalf of the District Board vehemently protested against it; but his protest was of no avail as the Collector sanctioned the alienation of the plot to the District Board in his R.Dis. 8223/26 dated 27.5.27 even though the District Board applied for its alienat after two years of its actual tresspass and strange to say even the Board of Revenue refused to interfure with the Collec 20.2.29der of alienation in B.P.Mis.602. L.R. and sett dated

20.2.28 when the memorialist approached the Board of Revenue

6. That the memorialist submits that in the first p place the alienation was ordered by the Collector for a purpose of viz. demonstration to the public of cocoanut dry cultivation which was not one of the legitimate functions of the District Board and secondly if the District Board wanted the land for any purpose it should have first applied to the Collector when it would have been possible for the memorialist to urge his strong protest against it s alienation to the District Board for a purpose which was outside the legitimate functions of the Didtrict Board and to prove that this Kumaki plot was quite necessary for the exercise of kumaki right by the memorialist without which the cultivation of the memorialist's kadim land would be endangered. Seeing that no such proper proceedure was followed, the memorialist had to suffer a good deal of inconvenience and also extra expenditure for raising th food crop in the kadim land.

7 That as if ~~xxxxxxx~~ it was God's will the memorialist should not be deprived of his legitimate kumaki, the District Board after some years of experiment and expenditure was reluctant to spend further on a scheme which was beyond its legitimate functions and therefore surrendered the plot and as that time the plot 25 cocoanut trees planted by the District Board, the Tahasildar who was satisfied that the plot was quite useful to the memorialist as kumaki leased out the plot to the memorialist for a period of three years from July 1943 to June 1946.

That after obtaining the plot on lease the memorialist was obliged to rear these young cocoanut trees by watering them in the proper season every year. At th same time he levelled a portion of about 35 cents in extent and converted it into a paddy field and raised paddy crop in it every year in order to get an example Agriculturist and to encourage the Gorw More Food scheme of the Government over which the present Goyernment have been spending huge somes of money. There was also a thatched shed in it and the memorialist carried out annual repairs to it so that the memorialist had to spend over rupees three hundred for these improvements in a lumpsome in addition to the recurring annual expenses.

9. That the memorialist submits that the Government are aware of the fact that the Kumaki lands are a peculiarity only in this District and that at the time of the first Revenue settlement in 1903 the Government having been

satisfied about the necessity of keeping in tact the sufficient waste land adjoining the kadim wargalands for the proper cultivation of the kadim lands allowed to wargadars to exercise their kumaki privilage over these waste lands lying within a hundred yards from the limits of the Kadim wargs free of charge and the memorialist believes that the Government must feel that this necessity of having kumaki lands in tact for the exercise of Kumaki privileges has not changed though years have lapsed and could have changed. When this is so the kumaki plot in question, the necessity of it for the memorialist has not ceased should have been left in tact for the use of the memorialist; but the memorialist finds that even after its surrender by the ~~xxx~~ District Board which it first occupied ignoring the rules laid down by the Government regarding alienation, the Revenue authorities here seem to be determined to see that the Kumaki of the memorialist does not revert to the memorialis as instead of granting this kumaki plot to the memorialist in darkast or even of extending the lease, the R.D.O. has passed an order refusing ~~xxx~~ to extend the lease of demanding its surrender with improvements within a month as was clear from the Tahasildar's order D.Dis. 7291/46 dated 10.12.46 received by the memorialist.

10. That in connection with this protest petition dated 27.2.47 against this order, the R.D.O. made a personal visit and was quite satisfied about the genuine necessity of the plot to the memorialist and though the R.D'O. was pleased to recommend the grant of the request of the memorialist the Collector appears to have turned down the R.D.O.'s proposal in his D.Dis.8785/47 so that the memorialist was obliged to approach the next higher authority viz. the Board of Revenue with an appeal against the Collector's order which seems to have been passed in Camera as the memorialist is still in the dark as to what the order is and why his just request has been refused seeing that even his application for copy of the Collector's was rejected in L.Dis. C.A. 267/47 dated 10.10.47

11. That the memorialist was sanguine that atleast the Board of Revenue would redress ~~xxx~~ his genuine grievance in the matter by perusing the connected records and the Collector's order the copy of which was denied to him, but strange to say the Board which says that it has perused the records rejected his petition in its Res.Ruutin.No. 3206 dated 15.5.48 without assigning any reasons.

5

12. That the memorialist is forced to believe th a the Board also failed to consider the genuine necessity of the plot to the memorialist and that it was perhaps influinced by the Collector's remarks which were made without a personal knoweldge of the plot as otherwise there was no justification for rejecting his petition.

1_. That the memorialist therefore prays that the benign Government may be graciously pleased to call for all relevent records including those relating to the uncalled for and irregular order of alienation to the District Board and subsequent surrender by the District Board and to direct the outright assignment of the plot to the memorialist under B.S.O.No.15

For which act of justice, the memorialist will ever pray

Coondapoor
Dated 15th.March.1949 I

K. Manjunatha Shenoy.

Name / S. Ramana / Coondapoor / N.W. Rly
Village Kyemkeri Land Suit No. 1972
Appeal against Govt. Board's orders

Endt No 1654 F/45.

Returned for resubmission with copies of petition
~~The petitioner should~~ may resubmit his petition in this with all connected Records to the Collector and the Board of Revenue and on their orders on them.

31-3-49

Under Secy to Govt. Revenue

28.3.49

29.3.49

To R. Manjunath Shanbogue.
Coondapur Town
S. Kanara Dt

To

The Tahasildar of Udipi Taluk
Udipi.

Humble petition of Kata Manjunath Shanbhag; Son of Marthappa Shanbhag Merchant, Coondapoor.

Sir,

I beg to submit that I am a merchant carrying on business in Coondapoor. I have landed property in Manur, Giliar and Chitrapadi and some other villages of Udipi Taluk.

2. I submit that S.No.195/2 of Chitrapadi Village ( measuring Ac.1-28 classed as assessed dry waste land) forms Kumaki to my patta land S.No.225/9 of Giliar Village. S.No.186 of Chitrapadi which intervenes 195/2 and 225/9 was also my Kumaki but it was assigned to me on Darkast some years back and the remaining Kumaki portion comprised in 195/2 was not applied for but retained as Kumaki. I was all along using it for Kumaki purposes and it was in my uninterrupted possession for a long time.

3. S.No.195/3 of Chitrapadi Village is the site of the Kota Travellers' bungalow under the management of the South Kanara District Board. It seems that the Dy. Director of Agriculture who happened to halt in the said Travellars' bungalow in November 1924 suggested to the Engineering Department that the waste land surrounding the bungalow might be planted with coconut plants. The Engineering Department immediately cut the tree grouth on my above Kumaki plot although I protested against the felling and although there was a vast extent of vacant waste land in the bungalow compound for planting cocoanut plants. Eventually the President, District Board applied to the Collector of South Kanara for the alienation of S.No.195/2 to the Board for planting coconut trees for the demonstration purposes to the public. The Collector sanctioned the alienation in his order R.O.C.9223/26-A dated 27.5.27 although the plot was my Kumaki and the demonstration to the public alleged by the District Board was not one of its legitimate functions. I protested against this to the Collector and even to the Board of Revenue but to no purpose.

The District Board subsequently surrendered the plot to the Government and in July 1943 it was granted to me by the Tahasildar on my application for temporary occupation for agricultural purposes for three years. I have reared the 25 coconut trees standing on the plot by watering them in the proper season. I have levelled an extent of 35 cents in the plot and converted it into a field and raised food crop in it There was a thatched shed in the plot when I occupied it and I have repaired it every year and kept it in good condition. Now as the period of three years has lapsed I have received an order from the Office Ref.C.No.7291/46-B dated 10.12.46 stating that the Revenue Divisional Officer has in his order N Dis 10973/27.11.46 has ordered that the lease of the plot to me should not be continued any longer. The order does not show any reasons why the lease was terminated. I failed to understand why such a step was taken without notice to me wh I have not acted in contravention of any of the conditions o the lease and also when the Government seems to have ordered that the " Grow-more-food " scheme should continue for a fur ther period of five years.

5. I therefore most respectfully pray that you may be ples to extend the period of the lease granted to me for a furthe period of three or five years as the case may be . I submit that as the plot forms my Kumaki I am entitled to use it as Kumaki for ever or even to have it assigned to me on Darkas The fact that it was alienated to the District Board for so period does not extinguish my Kumaki privilege as the alien was made without my consent and against my protest. It is a void in law as the Kumki Privilege enjoyed by me was under a statutory provision which could not be withdrawn except for an offence committed under the Kumaki rule. If the extentio of the temporary lease applied for could not be granted I pray that this application may be entertained as a darkast application for the land and the plot granted to me on dar under B.S.O.15 as there is no Government ban against assign of Kumaki lands: for which act of justice and equity I shal ever grateful.

Coondapoor
21st.February 1947

Petitioner

To

The Collector of
South Kanara
Mangalore.

Petition of Lota Manjunath Shanbhag
Son of Marthappa Shanbhag ; Merchant
Coordapoor. Dated 3rd October 1947

Sir

I learn from the order L.Dis 8318/26.9.47 of the Tahasildar of Udipi Taluk that with reference to my claim for the assignment of S.No.195/2 of Chitrapadi Village of Udipi Taluk, which forms my Kumaki your Honour has been pleased to pass orders in your Honour's order L.Dis.8785/47 dated 28.7.1947 that the plot can not be assigned on Parkash. As I want a copy of the order for my reference, I beg to request that a certified copy of the said order may be kindly granted to me. I have enclosed four copy stamp papers herewith for preparing the copy which may be sent to me to the above address by Registered Post. Postage stamps worth 0.6.6 are also enclosed. Any unused copy stamps or postage stamps may also be returned with the certified copy.

Your obedient servant.

Petitioner.

L.Dis. C.P.267-47.

Proceedings of the Collector of South Kanara, Mangalore.

J. A. Saunders, Esqr., M.B.E., I.C.S.

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Copies - Certified - copy of order in Collector's D.Dis.8785-47
Grant of

nerce. - Application of Sri. Kota Manjunath Shanbhag, son of Marthappa Shanbhag, merchant, Kundapur, dated 3.10.47

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Certified copy of this office proceedings D.Dis.8785/47 cannot be granted to the petitioner. Four copy-stamp papers and postage stamps worth six & half annas are herewith returned.

( By order )

SD. * * *****

Huzur Head-clerk

( True copy)

- 11 - 1947

BEFORE THE HON'BLE THE BOARD OF REVENUE,

Land Revenue & Irrigation,

M a d r a s.

Kota Manjunath Shanbhogue son of Marthappa Shanbhogue, Merchant, Kundapur town, Kundapur Taluk, South Kanara District. :- Appellant

Most Respectfully Sheweth,

That the Appellant being highly aggrieved- by the Order of the Collector of South Kanara, D. Dis. 8785/47 copy of which could not be produced as the same has been refused to be granted:

BEFORE THE HON'BLE THE BOARD OF REVENUE,

Land Revenue & Irrigation,

M a d r a s.

Kota Manjunath Shanbhogue son of Marthappa Shanbhogue, Merchant, Kundapur town, Kundapur Taluk, South Kanara District. - Appellant.

Most Respectfully Sheweth,

That the appellant being highly aggrieved by the order of the Collector of South Kanara D. Di..8755/47 copy of which could not be produced as the same has been refused to be granted to the appellant in Collector's L. Dis.CP.367/47 - dated 10.10.1947 - copy enclosed, begs to appeal to the Hon'ble Board against the said order for the following grounds.

2. That the appellant submits that the plot in dispute is S. No. 195/2 measuring acres 1.28 of Chitrapadi village, Udi 1 Taluk and forms direct kumki to his Kadim lands S.No.225/9 the small bit of land S.No. 186 intervening between the two being - part and parcel of his kadim warg land having been assigned to him subsequently on that ground.

3. That S. No.195/3 which was a common kumki plot had been alienated to the District Board in B.P.1314-Mis.dated - 4-7-1916 for purposes of a T.B. and/this alienation was for an important public purpose there could be no valid objection to - this alienation from either the appellant or other co..on kumkiars.

4. That on 1.11.1924 the Deputy Director of Agriculture had halted in this T.B. and he appears to have suggested to the District Board the planting of cocoanut plants on the western & norther sides of the T.B. and the District Board President appears to have ordered the L.F.Engineering staff to do so forthwith.

5. That the plot in question viz. 195/2 contained three tree growth at the time which the appellant was using for the cultivation of his kadim land S.Nos.225/9 & 186 to which the plot in dispute formed direct kumki and unfortunately for the appellant,

growth and planted cocoanut trees to the great detriment of the appellant.

6. That the appellant being an absentee landlord was - busy with his trade concern in Kundapur and he was completely in the dark about this trespass on his kumki land which was an aid to his cultivation and it is only subsequently that the appellant came to know of the feelings and though he protested against this action no action was taken to prevent trespass by the District - Board.

7. That it is only after about 2 years the District Board appears to have applied for its alienation for planting of cocoanut plants and it is really strange that the Collector should have sanctioned this alienation in his R.O.C.8223/26-A6 dated 27.5.27 although the plot was the kumki of the appellant and the demonstration to the public of cocoanut dry cultivation was not one of the legitimate functions of the District Board and the appellant strongly protested against the trespass on his kumki land which is quite necessary to him

8. That unfortunately for the appellant even the Board of Revenue to which the appellant then approached against this unwarranted trespass on his kumki land, refused to interfere with the Collector's order in B.P.Mis.602.L.R. & Sett.dated 20.2.28 so that the appellant was deprived of a plot which was quite necessary for the cultivation of his kadim land.

9. That fortunately for the appellant the District Board which was unable to maintain this demonstration cocoanut farm without unnecessary expenditure on a scheme which was beyond its legitimate - functions as laid down in the Local Board Act was obliged to surrender the plot in 1940 and as the plot contained some cocoanut plants - planted by the District Board the Tahsildar of Udipi leased out the plot to the appellant for a period of three years from July 1943 to June 1946.

10. That the appellant after obtaining the plot on lease - reared the 25 cocoanut trees standing on the plot by watering them every year in the proper season, levelled an extent of 35 cents in it and converted it into a paddy field and raised food crop in it under the existing grow-more-food scheme of the Government and also

also improv[illegible] thereon [illegible] in it by carrying out the annual re[illegible] [illegible] [illegible] these improvements.

11. [illegible] it the [illegible] in the beginning [illegible] in order ref[illegible] dated 1[illegible].46 of [illegible] to extend the lease and that therefore the [illegible] under the plot [illegible] within a month.

12. That the appellant thereafter approached the Kahsildar of Udipi with a petition [illegible] protesting against the order and requesting either for the cancellation of the lease for another 3 years or for granting the plot [illegible] to him on darkhast under B.S.O.15.

13. That the appellant [illegible] in connection with this petition the [illegible] inspection and enquiry and [illegible] necessity of the plot [illegible] his vegetable and garden [illegible] and [illegible] passed to the appellant the Collector [illegible] in his D.Dis.6765/47 [illegible] any his reasonable request [illegible] order has been communicated [illegible] a certified copy, the application for such [illegible] Dis.Ca.267/47 dated 10.1[illegible].1947 [illegible] above.

14. That the appellant submits that as the plot [illegible] is still registered as A[illegible] dry in the [illegible] and to him he is entitled to use it as such and the fact that the District Board trespassed in it and then obtained it in ~~it~~ all matters [illegible] his consent and against his protest will clearly show that he has not forfeited his kumki privileges and that when the plot is surrendered by the District Board it must revert to the appellant as his kumki which he is entitled to get on [illegible].

15. That the appellant therefore prayed that the District Board may be graciously pleased to call for [illegible] and in cancellation of the Collector's order to or[illegible]

the extension of the lease for a further period of five years or to grant it on darkhast to him under S.R.O.No. 15 .

For which act of kindness and justice, the appellant will ever pray.

Kundapur, dated - 11 - 1947 Appellant.

Encls:- 1

TRUE COPY

R.O; M.t.p.No.3206 Office of the Board of Revenue
Circuit, Madras, dated 15-5-1948

Present:- P.V.Sathi nather Esq.I.C.S, Commissioner of Land Revenue and Commissioner of Labour.

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Assignment-

Sub:- Land -(South Kanara)- Udipi Taluk-Thirthahalli Village-S.No.195/2- Extension of lease or re-Revision petition from Kota Manjunath Shanbhag rejected.

Read:- Petition from Kota Manjunath Shanbhag Son of Marthanna Shanbhag, Merchant, Coondapoor in Koondapoor Taluk, South Kanara District dated 28.11.47

2. Letter No. Ref C..o.Al.10009/47 dated 20.2 from the Collector of South Kanara.

RECOLLECTION :

The Board has perused the records of the reason to interfere with the Collector's order. rejected.

Sd-S.Krishnaswamy Ayyar
Asst. Secretary.

To the petitioner, Kota Manjunath Shanbhag Son of Marthanna Shanbhag, Merchant, Koondapoor Koondapoor Taluk South Kanara District.
The Collector of South Kanara( with records as on the next page.

List of Records :-

- - - - - - - - - -

1. Collector's R.Dis.8223/26
2. " R.Dis 255/16 Rev.16
3. " D.Dis.10106/42
4. " D.Dis.8785/47
5. " R.Dis.6793/26
6. " D.Dis.5795/41
7. " R.Dis.C.A.267/47
8. Tahsildar's D.Dis.7201/46

/Forwarded by Order/

Sd
SUPERINTENDENT

PCR.17/5/.

To

The Revenue Minister Madras.

36659 F/42
13/6

Sec/Rev

Humble petition from H.Krishna Hande, Kotathattu village, Udipi Taluk, S.K.

Dated h June 1949.

Sir,

I am hereby bringing to your kind notice that I am ~~the~~ one of those who suffered in the last civil disobedience movement of 1942 for which I was awarded a land measuring 1-28 acres in Chitrapadi village, Udipi Taluk S.No. ~~124~~ 195/2 of South Kanara District in the proceedings of the Collector of South Kanara, Mangalore dated 19.6.1943 and the true copy of the proceedings is attached hereto. The encroacher on this plot, one Kota Manjunath Shanbhogue was asked to evict from the land. After this I approached the Tahsildar of Udipi and considered the matter with him. He told me to take possession of the said plot and to start work thereon, and also told me that the encroacher Manjunath Shanbhogue had been asked to evict by notice.

So, I occupied the plot and began to construct a well of which the work is still going on, and built a house therein. On the 21st of May 1949 I was given a registered notice by the encroacher Manjunath Shanbhogue stating that he had applied for darkast of the said plot in his name. So, he further asked me in the notice to vacate the said plot and to keep it in the original condition. At once I went to the Tahsildar and showed him the notice for which I was advised to continue the work and I was told that Manjunath Shanbhogue cannot take any legal action upon me.

But on the 1st June '49 the encroacher Manjunath Shanbhogue with some of his tenants armed with swords and cudgels entered the plot by force and demolished

the house construction which was almost complete. The way to the plot ~~it~~ was blocked, thereby putting me to a loss of more than Rs.300/-. I tried to obstruct them but Manjunath Shanbhogue tried to attack me with the sword. The next day I reported the matter to the Brahmavar Police Station. Now the same Manjunath Shanbhogue is threatening me that he is going to spoil the well for which I spent more than Rs.1,000/-. As this is the rainy season I have to finish the work of the well as soon as possible. Therefore I request you to consider the matter immediately and pass suitable orders to give me protection.

Petitioner.

Copy to:

The Collector of South Kanara, Mangalore.

3 15.

Proceedings of the Collector of South Kanara, Mangalore.

Present: S. R. Kaiwar, Esq.,M.A.I.C.S.

Ref: C.No.B 8/769-49 dated 19.1.'49.

Land - Grant to Political Sufferers - Application - Udipi Taluk - Chitrapadi village - S.No.195/2 - Assignment - Orders - passed.

Read: (1) Application dated 21.2.1948 from Sri. K. Krishna Hande Kota, Udipi.

(2) Report of the Sub-Divl. Magistrate, Coondapoor M.Dis.9297 - 48 dated 10.11.1948.

(3) Report of the Tahsildar, Udipi Ref. C.No.131/ 5543-48 dated 20.9.48.

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Sanction is accorded for the assignment of S.No.195/2, measuring 1-28 acres of Chitrapadi village, in Udipi Taluk, to K.Krishna Hande, Kota,, Udipi. The encroacher on this plot, Kota Manjunath Shanbhogue, should be evicted from the land and the applicant should be allowed to take possession of it.

2. The Tahsildar, Udipi should issue the final order in form D after obtaining the declaration in duplicate as mentioned in this office Ref.C.No. B 8/1130-48 dated 27.11.1948; one copy being sent to this office.

By order

Huzur Head Clerk.

To .

The applicant.

Copy to the Tahsildar, Udipi; Revenue Divisional Officer, Coondapoor and the Dt. Congress Committee.

True Copy)

From

Kota Panjunath Shanbhogue
Land Lord & Merchant
Coondapoor

To

A. Krishna Hande
Son of Maliga Sannayya Hande
Kotatattu village
Udipi Taluk
Post Kota.

Sir,

In respect of S.No.195/2 of Chitrapadi village, Udipi Taluk, for which I have applied for darkast in my name and the proceddings of which are pending before the Revenue authorities, you have tresspassed into the above plot, which is in my possession and enjoyment, and you have encroached upon the said plot some days back and begun constructing a well. This is to give you notice that within 24 hours from the date of receipt of this notice, you are to vacate the said plot and keep it in the original condition failing which legal action will be taken against you for criminal trespass and damages. Please note.

Coondapoor,
Dated, 21st May 1949.

Yours faithfully,
(Sd) K. M. S.

Copy to:

Revenue Divisional Officer,
Coondapoor.

Revenue Department.
Subject.

Assignment - (South Kanara) Udipi Taluk - Chitrapady (V) Kumaki Land - S.No.195/2 - Refused - Petition against Board's Order - Report - Submitted -

Madras. L.Dis.b.4616/49. Dated:— 24-8-1949.

To

K. N. Anantharaman, Esq., ICS.,
Secretary, Board of Revenue.

S. Ranganathan, Esq., ICS.,
Commissioner of Land Revenue and Commercial Taxes.

Read:- Government Memo.No.22268 F/49-1, Revenue, dated 29-4-1949.
Board's Ref.B.4616/49-1, dated 10-5-1949.
From the Collector of South Kanara, Ref.11576/49-B dated 8-7-1949.
Board's Ref.B.4616/49-2, dated 20-7-1949.

L.DIS:—

Submitted to the Government.

2. The Board submits that the points discussed in paras 5 and 6 of the Collector's letter cited above are not material as the petitioner had lost his kumaki right even before the site was alienated to the District Board in 1926 for the land was occupied by the District Board for 2 years before it was actually alienated to it. It was in this view the petitions to the Board in 1928 - 1948 were dismissed.

3. The Board agrees with the Collector that the land may be reserved for public purposes. This will mean the cancellation the provisional assignment made to a political sufferer, but considering the usefulness of the site for a public purpose, the Board considers that such a course is necessary.

for Secretary.

To

The Secretary to Government,

Revenue Department, Madras.

(With records to be returned.

rm.24/8.

Ref. 11576/49-B5. South Kanara Collector's Office,
Mangalore, dated 8- 7- 1949.

From

Syed Ahmed Sahib Bahadur, B.Sc., (Hons.),
Collector of South Kanara.

To

The Secretary to Government,
Revenue Department, M a d r a s.
Through
The Secretary to the Board of Revenue L.R & C.T.,
Sir, Madras (in duplicate)

ASSIGNMENT - South Kanara - Udipi Taluk - Chitrapady village - Kumki land - S.No. 195/2 - Refused - Petition against Board's orders - remarks - report - submitted.

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REF:- (1) Government Memo No. 22268-F/49-1 Revenue Department dated 29- 4- 1949.
(2) Board's Ref. B. 4616/49-1 dated 10-5-1949.

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S.No. 195/2 of Chitrapady village, Udipi Taluk was alienated in favour of District Board for the purpose of a Co-coanut demonstration farm in this office R.Dis. 8223/26 dated 28-7-1927. Before alienation was ordered the present memorialist objected to the alienation on the ground that the plot formed Kumki to his Kadim wargd lands. But his objection was over-ruled on the ground that the public interests should predonimate over Kumki privileges.

2/- In this office D.Dis. 5795/41 dated 27-2-1942, this plot was ordered to be resumed for breach of conditions and re-entry was effected.

3/- In this office D.Dis. 10106/42 dated 9-1-1943 orders were issued to the Tahsildar Udipi to lease out the plot under Grow More Food campaign. In accordance with these orders, the land was leased to the memorialist for 3 years which terminated on 30-6-1946.

4/- In the meanwhile, the Revenue Divisional Officer Coondapur cancelled the lease on the lessee's failure to fulfil the conditions and ordered re-entry. Thereupon, the memorialist (lessee) again advanced his Kumki privileges and requested assignment of the land on that ground. The then Revenue Divisional Officer, Coondapur after personal inspection expressed ~~after personal inspection~~ the view that the plot can be assigned on Kumki privileges to the persons best entitled to it. In this office D.Dis. 8785/47 dated 28-7-1947 however, it was ordered that the Kumki privilege was extinguished by virtue of adverse possession by the District Board during the period of alienation. Against these orders, the memorialist submitted a revision petition to the Board of Revenue which rejected it in its Res. Rt. No. 3206 dated 15-5-1948. The present memorial is against those orders of the Board of Revenue.

5/- The crucial points for consideration are:

(a) Whether a Kadim wargdar who lost his Kumki privilege over an adjoining Government assessed waste land within Kumki limits, on account of the latter (Kumki land) being alienated for a public purpose, ( despite his objections) regains the Kumki privileges over the same plot, after its resumption?

(b) Whether the period of possession by the District Board by virtue of alienation can be treated as adverse possession?

P.T.O.

6. POINT (a) - There are no rulings or precedents to rely upon. Kumki being a concession granted by the Government, in the interests of cultivation, it appears fair and equitable that the concession should be revived in favour of the Kumkidar in case no public interests suffer. In the case under reference, the fact that the plot has been ordered to be assigned to a political sufferer (Please see this office C.No. 769/49-B8 dated 19-1-1949) indicating that it is no longer required for a public purpose. As between a Kumakidar and a political sufferer the Kumakidar is entitled to preference in the matter, of the assignment of the land and the land is not required for a public purpose, the ends of natural justice require that the status quo anto should be maintained and the privileges over the land to be exercised by virtue of Kumki by the holder of the adjoining Kadim lands should automatically revive. If the revival of the Kumki privilege is conceded in the case under reference, then the memorialist is entitled to preference against the Political sufferer.

POINT (b) Title under adverse possession of Kumki land is explained in Note 4 under para 10 of B.S.O. 15-40, as amended by correction slip No. 176. To put it briefly, it is as follows" unauthorised occupation of Kumki land by any person other than a Kumkidar for a period of over 6 months, and the Kumkidar failing to bring it to the notice of the authorities concerned." Both these ingrediants of adverse possession are not present in the case under reference. Firstly, the possession by the District Board, by virtue of alienation is duly authorised. Secondly, the Kumkidar (memorialist) duly objected to the alienation, before alienation was actually ordered. Hence it appears that the plea of adverse possession may not operate. Moreover, the view " that the Kumkidars have lost their Kumki privileges, if any, over S.No.195/2 of Chitrapady villge by adverse possession by the District Board over a period of 15 years" held in this office proceedings D.Dis. 8785/47 dated 28-7-1947 does not appear to be either correct or one based on principles of equity. Adverse possession could have operated if a third party had entered on the land without any authority and the memorialist (Kumkidar) had not brought the unauthorised occupation to the notice of the authorities, within the period of 6 months. In the present case the Government permitted the District Board to occupy the land and even alienated it in favour of that local body over-riding the protests and objections of the Kumkidar. The occupation was therefore permissive and the Kumkidar was not only alert about his privileges, but was also vehement in defending them.

7. The present position resolves into this. Whether the land is required for a public purpose or not. If the land is needed for a public purpose either immediately or in future the memorialist has no case. If on the other hand, it is proposed to assign the land, the memorialist has a superior claim to it than anybody else.

8. In this connection, the latest reports of the Revenue Divisional Officer, Coondapur require special consideration which finally settles the issue. The present Revenue Divisional Officer after personal inspection proposes that the plot is best suited for certain public purposes, such as a village chavadi, a Panchayat Board office and a radio and rural dispensary, for which there are no other Government lands available in the village. I agree with the Revenue Divisional Officer and suggest that the plot S.No. 195/2 measuring 1-28 acres of Chitrapady village, Udipi Taluk may be reserved for public purposes.

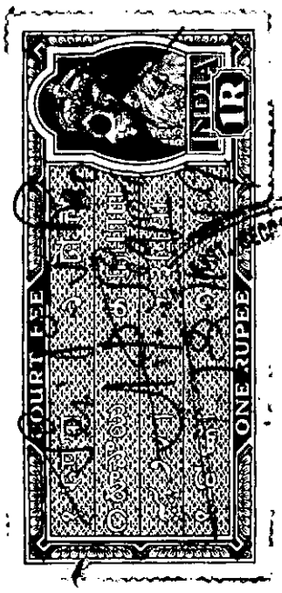
9. The connected records of enquiry togetner with this office files R.Dis. 8223/26, R.Dis. 255/16 Revenue D.Dis. 10106/42, D.Dis. 8785/47, R.Dis. 6783/4 26, D.Dis. 5795/4 D.Dis. 19009/47 records of C.No. 769/49/B8, Udipi Tahsildar's

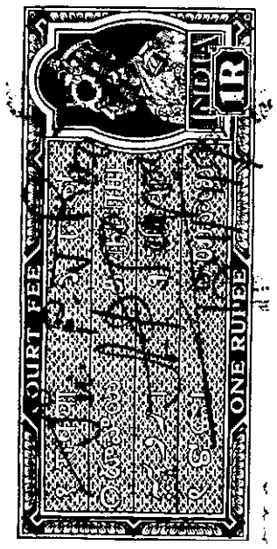
D.Dis. 7291/46, & E.C. 75/57 are enclosed for reference and return. 24

Yours faithfully,

For Collector.

VR/9-7-1949.





TO

THE HON. MINISTER FOR REVENUE,
GOVERNMENT OF MADRAS AT FORT ST. GEORGE,
M A D R A S .

Between

K.'Krishna Pande s/o Sannaya Hande, residing in Kotathattu village, Udipi Taluk, South Kanara. — Petitioner.

versus

Kota Manjunatha Shanbhogue, Merchant, Coondapur, S.K. — Respondent.

The abovenamed petitioner begs humbly to submit as follows:-

1. That the petitioner being a political sufferer who had undergone imprisonment for 6 months for political offence applied to the Collector of South Kanara by a petition dated 21-2-1948 for assignment of lands bearing S.No.221/1A of Manur village, S.No.244/1 of Giliyar village, S.Nos.195/1A, 1B, and 195/2 of Chitrapadi village, S.Nos.100/1A1 and 197/6 of Kotathattu village of this district to him according to the policy of the Government.

2. By his order C.No.B8/769-49 dated 19-1-1949 the Collector was pleased to order assignment of S.No.195/2, 1 acre 28 cents of Chitrapadi village, Udipi Taluk, to the petitioner and directed the Tahsildar, Udipi, to issue form D notice to the encroacher thereon. The encroacher was the respondent.

3. But as the petitioner came to know from the respondent that he had vacated the said plot in question,

the petitioner took possession of the said plot and effected improvements on the plot by constructing a house and digging a well at a cost of about ₹1,500. Thereafter the respondent began to harass the petitioner by trespassing thereon and committing mischief and damage by pulling down the house, etc. The petitioner has had to file a complaint against the respondent for the said acts to the police and the court of Sub-Magistrate. The Sub-Divisional Magistrate, Coondapur has in possession proceedings has directed the petitioner not to enter the said plot.

4. The petitioner submits that he by applications dated 30-7-1949 and 12-9-1949 informed the Collector of South Kanara that the Form D notice had not yet been sent to comply with the formalities by the Tahsildar of Udipi as per the directions in the Collector's original order of assignment and requesting him to direct his subordinates to do the same.

5. That unfortunately the petitioner has not ye received any Form D notice till now, nor prayer for assignment of other plots granted or rejected yet. By the delay in issuing the said notice, the petitioner is deprived of his valuable improvements on the plot which were effected by investing his all thereon.

6. The petitioner understands your honour has rectified the irregularities and has directed the assignment of lands to political sufferers in other districts without delay after realising the sufferings they had undergone and the sacrifices they had made.

The petitioner therefore prays that under the circumstances and in the interest of justice that your honour may kindly direct the concerned authorities to issue Form D notice in respect of the aforesaid plot to legalise and perfect his possession and also for assignment of other plots petitioner had prayed for, or else he would be put to great loss and hardship.

Kotathattu village,
Udipi Taluk, S.K.
Kota, P.O. S.K.
11 - 12 - 1949.

ಕೆ. ಸೀತಾರಾಮ.
Petitioner.

Endorsement No. 7452 F/49-1, Coll.
forwarded to the Collector of South Kanara for disposal.
Under Secretary to Government.
The Collector of South Kanara
with enclosure
16 XII 49.

(C No. 22268 f/49)

28 Rev Dept

b/cf From Sri Kotia Manjunatha Shanbhag, petition dated 7.4.49

pp 16-19 cf From Sri H. Krishna Hande petition dated 8/6/49

Pl come and docket call papers

From the Coll of South Kanara refer 11576/49-B5 of 8/7/49

pp 22-24 cf

From the Bd of Rev & Dis B. 4616/49 of 24/8/49.

p2 cf

Cir. M. No. 1494 of 23/5/50.

The Govt accept the Board's recommendation that the land in S No 195/2, ~~Kumaikandy~~, Chitrapadi village, Udipi taluk, South Kanara dt. may be reserved for public purposes. The assignment of the land made in favour of Sri H. Krishna Hande, political sufferer should be cancelled.

Pl file

29

2. The petitioners ~~are~~ is informed that the Govt are not prepared to grant ~~the~~ his request.

16/5/50.

17/5/50

17/5/50

D'forlw. Rds
22/5/50

Do. the Bd of Rev (LR) with records. ⊗
Collr of South Kanara
Do. Sri Kota Manjunatha Shanbhag, Merchants, Coondapur Town, South Kanara dt. (para 2 only)
Do. Sri H. Krishna Hunde, S/o Shanaya Hunde, Kotachatter village, Udipi Tk South Kanara dt. (para 2 only)

S/Cs - 4

⊗ 1) Connected records of enquiry

Collr's Office
2) RDi 8223/26
3) BPMr. 3206/1515/48
4) DDi 10106/42
5) DDi 8785/4
6) RDi 6783/26
7) DDi 5795/41
8) DDi 19009/47
9) Records 769/49 B8
10) Udipi Tahsildar
11) ~~EC 75/57~~
12) ~~BPMr 1314/1916~~
13) ~~BPMr 2267/1806~~
14) ~~BPMr 602/2018~~

Rev. Dept

RO 22268F/45 Assignment - (South Ramnad) Hdqrs taluk - Chithrāpady Village - Sro 195/2 - Kumaki land - Revision petition against Board's orders.

P1 C7 Petition from Kotha Manjunath Shanbhag of 7 H

To US

Please see the petition and its enclosures on the file C7.

Para 4 P2 C7 It is stated in Sro 195/2 of Chithrapady Village Hdqrs taluk, South Ramnad that is a Kumaki land of the petitioner, who is the owner of RO 225/9 in the same Village. The

Para 2 P2 C7

Para 5 PP2-3 C7 petitioner states that this plot of land was alienated to the Wf Board, South Ramnad in 1927 in spite of his protest. Later on,

Para 7 P3 C7 the Wf Board seems to have surrendered the plot and it was leased out to the petitioner for a period of three years during 1943-4.

2 ibid. The Collr however refused to extend the

Para 10 P4 C7 lease or assign it in favour of the petitioner. Against this order, the petitioner

PP10-13 C7 approached the Board of Rev. The Board of Rev, after perusing the connected

Page 14 C7 records, refused to interfere with the Collr's order and rejected the petition. The present petition is against the Board's orders. There is no provision for an appeal to Govt in the matter and the Govt may decline to interfere. However it is not clear why the petitioner's request was rejected by the Collr. For orders whether the Collr may be asked to submit a report in the matter through the Bd of Rev. Subject to orders a draft memo is submitted for approval.

27.4.45

27.4.45

28.4.45

Issued as Memo. No. 22268 F/49-1 Rev. Dis. 29.4
From Lt. Krishna Nande, Chitrapady 8.6.49 pp 16-17 C.F.

To A.S.

Please see the Note from Petitioner, the memo on p 15 C.F. and the petition on pp 16-17 C.F.

2. In respect of R.S. No 195/2 of Chitrapady Village which has been assigned to the petitioner as a political sufferer, by the Collector South Kanara, U.K. Shanbogue, has filed a petition before Govt. asking an appeal against the Board's orders and requesting assignment. A report has been called for and the Collr's is awaited. A Copy of the petition pp 16-17 has gone to the Collr. It may be asked to submit his report this petition also. Subject to orders a draft memo is submitted for approval.

Page 18 C.F.
pp 2-5 C.F.
Page 15 C.F.

20.6.49
21.6.49
21.6.49

Issued as Memo No 22268 F/49-2 Rev (4) 21.6.49 Page 20 C.F.
From the Bd of Rev Dis B 46 16 (4) 24.6.49 Page 21 C.F.

To A.S.

Please see the Memo. on p. 20 C.F. and the Board's report together with its enclosure on pp. 21-24 C.F.

2. S. No. 195/2 of Chitrapadi village, Udipi taluk, South Kanara district forms direct kumaki land to the land of the petitioner. It measures 1.28 acres. This site was alienated to the District Board, South Kanara in 1947 for use as a public demonstration farm. The petitioner had then objected to the alienation but his objection was over-ruled. The District Board seems to have later on abandoned the land and so in 1942 the land was resumed by the Government The petitioner then applied for assignment of the land but his application was not considered. The Collector observed

Page 6 n/f (N)
pp 37-39 C.F. (N)
pp 17-18 C.F. (O)
pp 33-34 (L)
Page 1 C.F. (M)
Page 2 n/f (M)

that the land should be leased under G.L.F. After the resumption the land was temporarily leased to the petitioner in 1943 for a period of 3 years ending 30-6-1940 under G.... rules. As the petitioner failed to fulfil certain terms of the lease, the lease was not renewed in favour of the petitioner, even though the petitioner applied for it.

3. The Collector turned down the recommendation of the R.D.O. for the assignment of the land in favour of the petitioner on the ground that the petitioner had lost his Kumaki privileges over the land on account of the occupation of the land by the District Board and that the land should be reserved for use as play-ground or if not required for that purpose, the usufruct of the trees on the land should be sold in public auction.

4. The petitioner filed an appeal before the Board of Revenue against the orders of the Collector refusing to assign the land to him. The Board rejected his appeal. The present petition on pp. 2-5 C.F. is against the Board's orders.

5. In the meantime, the land in question has been provisionally assigned by the Collector to a political sufferer, H. Krishna Hande. The political sufferer has stated that he occupied the plot pursuant to the orders and built a house in the land and has been constructing a well. He states he has spent Rs.300 for the house and Rs.1,500 for the well. He has petitioned to the Government that K.M. Shanbogue demolished his house construction which was almost complete and that he is threatening that he is going to spoil the well. He has requested suitable orders to give protection to him. In Memo. No. 22268 F/49-2, Revenue, dated 21-6-1949 the Collector was asked to submit his report on this petition from the political sufferer.

6. From the three reports of the R.D.O., Coondapur on pp. 33-40 of (W), it will be seen that this particular plot of land has become the bone of contention between K.M. Shanbogue and the political sufferer, H.K. Hande. The R.D.O., reports that the political sufferer, without waiting for the

removal of the encroachment by K.M. Shanbogue, ~~the political sufferer~~ had entered upon the land which has been resisted by the former; the result being that proceedings under Section 145 Cr.P.C. have been started to prevent breach of peace and the Police have been directed to place the land in charge of the patel. For the reasons stated by the R.D.O. in his report on pp. 39-40 of (W), ~~the R.D.O.~~ he recommends that the land may be reserved for public purpose like the construction of a village chavadi, etc. The Collector and the Board recommend the cancellation of the provisional assignment made to the political sufferer ar the reservation of the land for public purpose

Para 2 pp 35-36 of (W)

Para 8 P 23 C?

Page 21 C?

The point now for consideration is whether the land should be assigned to K.M. Shanbogue, or the political sufferer, H.K. Hande or whether it should be reserved for public purpose like the construction of a village chavadi, etc. The points for consideration in favour of K.M. Shanbogue seem to be that this particular land is kumaki to his lands and that he has been applying for the same since many years. The Board considers that this petitioner had lost his kumaki right even before the site was alienated to the District Board in 1926, as the land was occupied by the District Board for 2 years before it was actually alienated to it. It was in this view that the petitioner's revision petitions to the Board in 1928 and 1948 were dismissed. The R.D.O. also reports that this S. No. 195/2 is kumaki not only to K.M. Shanbogue but also to the holders of certain other kadim lands. It therefore appears that the petitioner has no case to press his claim for the assignment of the land as ~~jungjudar~~ Kum, Further it is reported that he is a rich and influential person. ~~Under the B.S.O. a kumkidar has not only shares in the [illegible] of kumaki land.~~ It is therefore for orders whether the petitioner may be informed that the Government decline to interfere in the matter on his behalf.

Page 21 C?

(Page 40 of (W))

8. If A above is accepted, it leaves the political sufferer as the only claimant to the land. The Collecto

and the Board are against the assignment of the land to the political sufferer as the land is required for public purposes. It is however submitted that the political sufferer (for reference back to) had already entered upon the land and constructed a house and a well. He has stated that he has spent s.300 for the house and Rs.1,500 for the well. The R.D.O., the Collector and the Board have not offered their remarks about the truth or otherwise of this statement. Moreover, it is also submitted that under orders in G.O. No. 1523, Revenue dated 11-6-1949 political sufferers have been given the first priority in the order of assignment of isolated plots of land at the disposal of Government. It will also be seen from the notes on pp. 1-2 N.F. of the Collector's C. No. 769-49-B8 at (V), that this was the only plot of lands available out of several S. Nos. applied for by the political sufferer. It may be difficult for the political sufferer to select alternative lands. It is therefore for consideration whether the land may be assigned to H.K. Hande, the political sufferer. For orders.

HDS
6-9-49
21 CF

Sri Manjunath who claims right as Kumakidar has lost that right as he previously allowed unauthorised occupation of the site - even if it by the Dr BD, without bringing the matter to the notice of the Govt. He is also reported to be a wealthy man and no special consideration need therefore be shown to him.

The land has already been assigned to a political sufferer and his occupation is being objected to by Sri Manjunath and

possibly the other interested parties may also join in the protest. The Coll. now brings to notice that the land will be useful for a public purpose and that it may be reserved. It is not clear why the Coll. did not canvass this aspect of the case when he assigned the land to a political sufferer. In any case cancellation of the assignment already made is likely to be misunderstood. For orders whether the Govt will allow the assignment to stand and reject the memorial of Sri Manjunath & the Coll. may be asked to select some other site for public purposes mentioned by him.

10.9.49

D/S

I.T.M. (AR)

The petnr Sri Shanbogue has not made any refce to the poll. sufferer, but has merely put forward his claim for assignment, & requested a reconsideration of the Bd's orders rejecting his appeal at p. 14 of (H). It is unnecessary to go into the question whether the petnr has kumaki rights over the land or not, because under the latest orders, land at the disposal of Govt should be assigned in the order of priority indicated in the para 2 of (A). The petitioner cannot claim the benefit of para 3 (i) of (A) because he

22268F/49

owns more than 5 acres first or 10 acres ?
He should therefore be evicted & the land disposed of as directed in (A).
This may be the reply to his prayer at A p. 5 ef.

The next question to be considered is whether the land in question which has been assigned to the pett. sufferer Handa should now be withdrawn from him & reserved for ~~Govt~~ public purposes as now suggested by the Coll & the Ba As stated by A-S., this is likely to be misunderstood. In any case it would not be in keeping with our instruction that provisional assignments made prior to the issue of the general g.o should not be cancelled. In this case the assignment was not a provisional one but a regular one for orders on this point.

The petn of Handa at p. 16-17 ef will be dealt with separately.

19.9.49

HMT (CK)

21/9

C&RO 9.49

DEPUTY SECRETARY TO GOVERNMENT
21 SEP 1949
REVENUE DEPARTMENT

21 SEP 1949

To HMS

Rejected

With reference to orders in circulated above

D

To A.S.

With refee. to the orders on pp 6-7 above a draft order is submitted for approval.

With refee. to the orders at ✱ on p. 7 anti attention is invited to para 4 of the draft. A.C.B.E. against 3.1.1950 may be made to watch the receipt of the Collrs. reports.

6/10/49 (D.S.)

To A.S.

The following note is submitted with reference to Dy. Secy's order instructing to examine the question whether Kumaki lands will come within the purview of the provisions in Govt 1523 Rev of 11.6.49.

(A)

2. Kumaki land is defined as Govt waste land within 600 yards of assessed lands included in Wargs (registered holdings) formed prior to Fasli 1276 and over which the Wargdar enjoys certain privilege of grazing cattle, cutting firewood, collecting leaves etc. for his own agricultural and domestic purposes. Kumaki lands are assigned under the darkhast rules subject to slight modifications e.g. in assigning lands if there are two or more applicants, preference should be given to any registered holder or Balawargdar or Mulgenidar who is a Kumakidar of the land applied for. The use of Kumaki lands is not enjoyed as of right but only as a matter

para 60 at p. 40 of the Scheme Rules. Govt 1416 Rev (W) dt 15.7.34 printed at page 117.

Rules 15-44 as amended p. 55 of Bk (29)

Legal note at page 4 ante

But pl see Legal dept note at pp 9-10 NF in LF. The Con of Kumaki lands is somewhat different

of concessions. The Govt can therefore at their discretion dispose of these lands at their discretion

3. When the question of individual assignment to ex-service men was been considered, Sri K.R. Karanth as Rev Minister in 1946, minuted as follows:—

"Kumaki lands in South Kanara should not be assigned to the prejudice of the Kumakidars, that is the preferen rights of the Kumakidars should not be violated by this G.O."

NF of G.O. 5523 Rev dt 11.6.46 (B)

It may be mentioned that there will be strong opposition if Kumaki lands are assigned according to the priority mentioned in the G.O. 1523 Rev dt 11.6.46. Attention is also invited to the Legal Debbi note on pp. 9-10 NF in the L/F. wherein they have stated that it is a question of policy whether these things (Kumaki rights) — which presumably have been in Vogue in the past should be prohibited altogether or whether they should be permitted only with the previous permission of the Collector. As Kumaki rights have been in Vogue for a long time past it is a matter of policy whether Kumaki lands should be considered to come under the general orders. If it is decided that the instructions in G.O. 1523 Rev dt 11.6.46 should apply to the assignment of Kumaki lands also it is for consideration whether such lands may be taken up for assignment only if there are no non-Kumaki lands available for assignment in the Taluk as in the case of poramboke lands. To order.

(A)

Ltr. No. 7711/Leg

Legal Secy advises the latter view

(A)

22.4 for (A)

18.4 Leg

4. The pleas. case will be de:-.5

with reference to the orders as para 2 of the notes on p. 9 ante

It would seem advisable not to treat Kumaki lands as available for assignment to non Kumakidars also. The Govt have been recognising certain rights of Kumakidars on such lands. Attention is also solicited to the minute of Sri Karanth as HM Rev extracted at p. 9 supra. Extracts may be taken and separate order issued on the final qn.

2/. So far as this file is concerned it might point out that the orders need not be held up if we accept the view that the Kumakidar has lost his Kumaki right by allowing the DB to occupy the land

22.10.49 DS (I regret I was unable to deal with it earlier)

The petitioner no doubt lost his rights as a kumakidar in the twenties when he failed to bring to the notice of the Collector the occupation of the land by the district board within a period of six months from the date of occupation. (The district board occupied the land even prior to its alienation to it by the Government). But, when the land was resumed again by the Government, it seems to me that his rights as a kumakidar can be said to have revived. If this view is correct, the petitioner has a preferential claim to the assignment of the land and its assignment in favour of the political sufferer is irregular.

2. I suggest that this point be examined further in consultation with Legal, if necessary. Meanwhile, the issue of orders giving effect to the orders passed in circulation at p.7 ante may be held up.

9/11/49

DEPUTY SECRETARY TO GOVERNMENT 13 DEC 1949 REVENUE DEPARTMENT

SECRETARY TO GOVERNMENT 13 DEC 1949 REVENUE DEPARTMENT

12/12

(LR)

To AS

Please see Dy. Secy's note and the orders in circulation ampp. to above. The further petn. of K.K. Hande since received ampp. 25-27 cf. May also be read.

S.R. of B/ No (175) S 196.

2. Under BSO 15-40 Note ii of paragraph 10 a Kumukidar shall be liable to forfeit his Kumiki Right in favour of the unauthorised occupant of the land if he fails to bring the occupation to the notice of the authorities for a period of more than Six months unless it can be shown that the occupation was without his knowledge. In the case under reference the petitioner (Ranjimaki Shanbhag) has stated in almost all his petitions (to the Collr. to the Bd and to the Govt) that he is an absentee landlord on account of business in Coondapur. and that as soon as he came to know of the unauthorised occupation by the District Board, he protested. It is stated that the land was under the unauthorised occupation of the Dt. Board for nearly 2 years prior to its alienation to the Board in May 1927. The petitioner is stated to have objected for the first time on 31.12.26 It appears therefore that the petitioner will get protection under the BSOs referred to above, if it is deemed that the encroachment by the Dt Bd was without his knowledge. Another point is that under the BSOs the Kumikidar will forfeit his right only in favour of the unauthorised occupant. There is now no unauthorised occupant in respect of the land. The land vests in Govt. and the Kumiki right can be considered to have terminated. In the circumstances explained above the petitioner can be considered either not to have forfeited his Kumiki rights or to be

B 6 II cl + X 5 1/2 cl

5.7(K) (K)

12

he had forfeited it due to adverse possession by the Dt. Board & his Kumuki right will be revised when the land is returned by Govt. The petitioner seems therefore entitled to be treated as one of the Kumukidars for the land (It is stated that there are as many as five other common Kumukidars for the land) Legal may see. (H.)

3. The question whether the political Sufferer (K:K-Hande) is entitled to the land will depend on the decision whether Kumuki lands should be treated as lands available for assignment under Govt. Res. dt 11.6.48. This point (A) has been examined in the notes on pp 8-10 above. Attention is invited to para 1 of Asst. Secy's note on p 10 ante. Orders may be taken on this question in circulation file the file is received back from Legal.

7.12.49 The file may be sent to Legal with reference to para 2 of Dy Secy's note at p 10 supra. DS

23/12/49 Legal

Ltr No 22268/49
O 27.12.49
AB

LEGAL DEPARTMENT.

The view expressed by D.S., Revenue, at A on p. 10 ante is correct.

19/1/50 K.M. 19/1/50

S.

Revenue Dept Revenue
Legal U.O No 17569
20-1-50.

ASSISTANT SECRETARY 17569 28 DEC 1949 LEGAL DEPARTMENT

ADDITIONAL ASST. SECRETARY TO THE GOVERNMENT 47521 24/1

To A.S.

S. No. 195/2 of Chitrapadu village in Udipi taluk, South Kanara district forms direct kumaki land to the land of K.M. Shanbogue. It measures 1.28 acres. This site was alienated to the District Board, South Kanara in 1927 for use as a public demonstration farm. The kumakidar (K.M. Shanbogue) had then objected to the alienation but his objection was over-ruled. The District Board seems to have later abandoned the land and so in 1942 the land was resumed by the Government. The kumakidar then applied for assignment of the land but his application was not considered. The Collector observed that the land should be leased under G.M.F. After resumption the land was temporarily leased to the kumakidar in 1943 for a period of 3 years ending 30-6-1946 under G.M.F. rules. As the kumakidar failed to fulfil certain terms of the lease, the lease was not renewed in his favour even though he applied for it. The Collector turned down the recommendation of the R.D.O. for the assignment of the land in favour of the kumakidar on the ground that he had lost his kumaki privileges over the land on account of the occupation of the land by the District Board and that the land should be reserved for use as a playground or if not required for that purpose, the usufruct of the trees on the land should be sold in public auction. The kumakidar filed an appeal before the Board of Revenue against these orders. The Board rejected his appeal. The present petition on pp. 2-5 C.F. is against the Board's orders.

2. In the meantime, the land in question has been provisionally assigned by the Collector to a political sufferer, Sri H. Krishna Hande. The political sufferer has stated that he occupied the plot pursuant to the orders and built a house in the land and has been constructing a well. He has stated that he has spent Rs.300 for the house and Rs.1,500 for the well. He has petitioned to the Government that K. Shanbogue, the kumakidar, demolished his house construction which was

almost complete and that he is threatening ~~that he is going~~ to spoil the well.

3. It will be seen from the reports of the R.D.O. Coondapur at pp. 33-40 of (W) that this particular plot of land has been under dispute between K.M. Shanbogue, the kumakidar and H.K. Hande, the political sufferer. The R.D.O. has reported that the political sufferer had entered upon the land without waiting for the removal of the encroachment by K.M. Shanbogue, the kumakidar; the result being that proceedings under section 145 Cr.P.C. have been started to prevent breach of peace and the police have been directed to place the land in charge of the Patel. For the reasons stated by the R.D.O. Coondapur in his report at pp. 39-40 of (W), he recommends that the land may be reserved for public purpose like the construction of a village chavadi, etc. The Collector and the Board recommend the cancellation of the provisional assignment made to the political sufferer and the reservation of the land for public purpose.

4. The point now for consideration is whether the land should be assigned to K.M. Shanbogue, the kumakidar or H.K. Hande, the political sufferer or whether it should be reserved for public purpose like the construction of a village chavadi, etc. The points for consideration in favour of K.M. Shanbogue seem to be that this particular plot forms a kumaki land to his lands and that he has been applying for the assignment of same since many years. The Board considers that K.M. Shanbogue had lost his kumaki right even before the site was alienated to the District Board in 1926 as the land was occupied by the District Board for 2 years before it was actually alienated to it. It was in this view that the petitioner's revision petitions to the Board in 1928 and 1948 were rejected. The view taken by the Collector and the Board do not seem to be incorrect. The petitioner no doubt lost his rights as a kumakidar when he failed to bring to the notice of the Collector the occupation of the land by the District Board within a period of six months from the date of occupation

But, when the land was resumed again by the Government his rights as a kumakidar ~~seem~~ must be deemed to have revived and he has a preferential claim to the assignment of the land. (please see Dy. Secy's note on p-10 ante and legal note on p-12 ante.

5. The question then arises whether the kumakidar ~~shall~~ will have a preferential claim for the land or the political sufferer who is given first priority in the matter of assignment of lands at the disposal of Government. The decision on this question will depend on the view taken by Government whether kumaki lands should be treated like other lands at the disposal of the Government and disposed of in accordance with the instructions in G.O. No. 1523, Revenue, dated 11-6-1949 or whether such class of lands should be treated distinctly (please see para 1 of Asst. Secretary's note on p. 10 ante. As orders cannot be issued in this file without a decision on the general question the point may be considered even now)

When the question of individual assignment to ex-servicemen was being considered, Sri K.R. Karanth as Revenue Minister in 1946 minuted as follows:--

"Kumaki lands in South Kanara should not be assigned to the prejudice of the kumakidars, that is, the preferential right of the kumakidar should not be violated by this G.O.".

In 1943 the Board was asked to instruct the Collector of South Kanara to lift the ban, if any, on the permanent assignment of kumaki lands imposed with a view to the reservation of ~~such~~ lands for ex-soldiers, though the ban on assignment of other lands was not lifted. Attention is invited to para 3 of the note on p. 9 ante and para 1 of Asst. Secy.'s note on p. 10 ante. For orders whether tl Board may be informed that the general orders in G.O. No. 1523, Revenue, dated 11-6-1949 in the matter of assignment do not apply to the disposal of kumaki lands. If this ~~will be~~ is approved the kumakidar Sri Shanbogue and the other kumakidars will have preferential claim to the assignment of this land to them.

6. As however the Collector and the Board have

recommended the reservation of the land in question for a public purpose it has to be decided whether the land should be granted to the kumakidar or whether it should be reserved. The assignment of the land in favour of the kumakidar was rejected on the grounds that he had lost h_ kumaki rights. Since the Govt. take the view that the kumaki rights have revived in his favour it is for consideration whether the Board may be asked to assign the land in favour of the kumakidar cancelling the assignment in favour of the poll-sufferer if it is not actually required for any public purpose. As it is stated that there are 5 more kumakidars the Board may be asked to consider their claims also in assigning the land. For orders.

para 8 p 34 ✓ p 21 C

C

M p 14 (H)

Orders are requested on ~~A on p 15~~ B on p. 16 ante and C ~~on p 15~~ ante above

The proposals at B & C above may be approved

14.2.50 DS.

(I regret I have not been able to deal with his file earlier).

Although H.M.(L.R) passed orders at p.7 N.F. th his permission the matter was examined further. e decision in this case really rests on the answer the question whether a kumakidar has any pre-emptive ght to the assignment of his kumki land. Can a makidar say in effect that, if the Govt. decide to sign his kumki land, he has the first claim over e land? Is such a claim legally enforceable? I have t been able to trace any precedents. The Board of venue has also been consulted but no precedents have far been traced. The only discussions on the bject that have been found are very recent and are eady referred to in the office note. Mr. Karanth en he was Revenue Minister minuted that kumaki lands

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in South Kanara should not be assigned to the prejudice of of the kumakidars and that the preferential right of the kumakidar should not be violated.

2. In this case certain kumaki land of Sri Shambogue was assigned to a political sufferer by name Hande. The kumakidar objected to the assignment but the Collector and the Board ignored his objection. He has now petitioned to the Government. The Collector and the Board ignored his objection on the ground that he had lost his kumaki rights. This view, however, is not correct. Please see para 1 of my note at p.10 N.F. and the note of Legal at p.12 N.F. In view of this and of what has been stated in para 1 above, about a kumakidar's rights, I would suggest that the assignment made in favour of the political sufferer be cancelled. I do not, however, recommend its assignment to the kumakidar. The land may be retained for public use. The local officers considered that the land is most useful for certain public purposes. The Collector and the Board agree. The Govt. may, therefore, direct cancellation of the assignment in favour of the political sufferer and keep the land for public use.

21/4/50.

HM (LR) Shankarshetty H.M (Agri) Even this file at this stage.

HM (Edn L).

25/4/50

26 APR 1950

To U.S.

With reference to the minute of H.M (LR) above the file may be circulated to H.M. (Agri), H.M (LR) and H.M (Edn)

26/4/50.

26/4/50

27.4.50 28.4.50

H.M (Agri)

H.M (LR)

H.M (Edn L)

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It is a long standing custom and usage in South Kanara to assign kumaki land to the kumakidar and none else. I do not think there are any cases of assignment of kumaki and to persons other than the kumakidars and against their consent in the matter. I would suggest the cancellation assignment of of the kumaki land to the political sufferer (assigning him some other land) and assigning the ~~kumaki~~ plot to the kumakidars concerned.

2/5/50

The assignments may be cancelled if the law requires for which we

4/5/

4/5.

DEPUTY SECRETARY TO GOVERNMENT 03 MAY 1950 REVENUE DEPARTMENT

DEPUTY SECRETARY TO GOVERNMENT 05 MAY 1950 REVENUE DEPARTMENT

SECRETARY TO GOVERNMENT 5 MAY 1950 REVENUE DEPARTMENT

Jo U.S.

The file may be circulated to H.M (Agri) for perusal of the minutes of H.M. (LR)

9/5/50. 9/5/50

E.M.R. 10/5/50

~~D.S~~

U.R. 11.5.50

D.S

H.M (Agri)

15 MAY 1950 REVENUE DEPARTMENT

X The decision in this case should not be made generally applicable to other kumki lands in S. Kanara.

H.M (Agri) 13/.

SECRETARY TO GOVERNMENT 15 MAY 1950 REVENUE DEPARTMENT

Jo U.S.

With reference to the minutes of H.M (Agri) at 'X' above it is submitted that the orders proposed to be issued in this case will apply only to the

land in question viz. Sy. 1957/2, Chitrapur village, Sirsi Kumara Kl and not to other Kumki lands. A draft order is submitted for approval. H.M (LL) may see again cor. to the minute of H.M (Agri) at 'x' on p/8 ante.

16/5/50.

17/5/50 17/5/50 18.5.50

Cir: 19.5.50

DEPUTY SECRETARY TO GOVERNMENT
22 MAY 1950
REVENUE DEPARTMENT

JHM (LR)

SECRETARY TO GOVERNMENT
22 MAY 1950
REVENUE DEPARTMENT